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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 150

THE ASSOCIATED PRESS,

Petitioner,

—against—

EDWIN A. WALKER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS
OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF
TEXAS

REPLY BRIEF FOR THE PETITIONER

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Since Respondent has elected to fragment his argument into two briefs, one in response to Petitioner's brief and the other in response to the amicus brief of The Tribune Company, Petitioner will here respond to both.

I.

In his briefs, particularly the brief in response to the amicus brief of The Tribune Company, Respondent attempts to create the impression that he was arrested and charged with a felony and suffered various other humiliations as a direct and proximate result of the news reports

here involved (Respondent's Answer to Amicus Curiae Brief, pp. 2-3, 11, 14-15; Respondent's Brief, pp. 38-39, 46-47).

Nothing could be further from the fact.

The documents annexed to General Walker's answer to The Tribune Company's amicus brief disclose on their face that Walker was arrested on October 1, 1962 (Respondent's Answer to Amicus Curiae Brief, Appendix, pp. i, viii-ix). The dispatches here complained of are dated, respectively, October 2 and October 3, 1962 (R. 11). Each dispatch states expressly that General Walker had already been arrested (R. 11, 12). It is therefore obvious that the arrest occurred before the dispatches were written, much less published.

II.

At pages 40 and 41 of his brief, Respondent has cited a number of cases which he claims militate against the extension of *Sullivan* to public figures. Two of these cases, *Clark v. Drew Pearson*, 248 F. Supp. 188 (D. D. C. 1965), and *Fignole v. Curtis Publishing Co.*, 247 F. Supp. 595 (S. D. N. Y. 1965), are based upon the theory of reciprocity of official privilege with respect to public officials. But this Court made it clear, in *Rosenblatt*,* that the rationale of its decision in *Sullivan* did not rest upon any theory of reciprocity of official privilege. Moreover, as this record so clearly establishes, General Walker was able to obtain publicity for his opinions and his version of the facts far exceeding that which was available to the public officials involved in *Sullivan*, *Garrison*, *Henry* and *Rosenblatt*.

The other cases cited by the Respondent are clearly distinguishable on their facts or totally inapposite.

**Rosenblatt v. Baer*, 383 U. S. 75, 84, n. 10.

III.

General Walker has argued (Respondent's Brief, p. 36) that the definition of "actual malice" under Texas law is more stringent than under *Sullivan*, and that the findings by the Texas courts of no "actual malice" do not, therefore, necessarily preclude a finding of "actual malice" within the meaning of *Sullivan*. A reading of the charge given by the trial court here discloses, however, that the Texas definition of malice is more favorable to Walker than the "actual malice" test prescribed by *Sullivan* (R. 60). Cf. *Henry v. Collins*, 380 U. S. 356, 357. In any event, Walker's argument ignores the fact that the Texas courts expressly found that there was in this record no evidence of "actual malice" as defined by this Court in *Sullivan*. The trial court said (R. 72):

"Since I have determined that there is no actual malice in this case, the question arises as to whether the rule of *New York Times v. Sullivan* . . . should apply to a public figure such as plaintiff. If it does, then the entire jury verdict must be set aside . . ."

The Texas Court of Civil Appeals affirmed the trial court's judgment in this, as in all other respects (R. 1551), and Walker's conditional application for a writ of error on the malice point was denied by the Texas Supreme Court (R. 1553).

IV.

Even apart from the findings of the Texas courts, Respondent's contention that Van Savell deliberately lied is implausible on its face, because Savell had no motive to defame General Walker. Van Savell, despite his youth, was an experienced reporter (R. 720-721, 750). He was a Southerner, born and bred in Mississippi (R. 719-720). He

had previously worked for the Jackson Clarion-Ledger (R. 720), a paper whose segregationist views were well known. There is not the slightest suggestion that Savell had any personal animosity toward General Walker, or any reason to portray the General unfairly. And in the light of the inflammatory statements and speeches made by General Walker before he arrived at the Oxford campus, there was nothing in the content of the dispatches which would have suggested to the Associated Press that the activities attributed by Savell to General Walker did not, in fact, occur.

Finally, General Walker suggests no reason why the Associated Press—a non-profit mutual cooperative association composed of hundreds of members throughout the United States, representing a wide range of opinion on all issues, including integration—would deliberately lie about him. There is not the slightest evidence that the Associated Press did not in this instance live up to its well-deserved reputation for impartiality and fairness in reporting the news.

V.

Respondent's claim that Petitioner "waived" its defense of fair comment is wholly unsupported by the record. In fact, Petitioner raised the fair comment defense at every stage of this case: in its answer (R. 29-30); in its motion for an instructed verdict at the close of Respondent's evidence (R. 42, 44, 45); in its motion for an instructed verdict at the close of all the evidence (R. 49-52); in its exceptions to the charge of the court (R. 54); in its motion for judgment notwithstanding the verdict (R. 64-67); and in its motion for a new trial (R. 83-86, 90), as well as on appeal to the Texas Court of Civil Appeals (Appellant's Brief, pp. 3-4, 65-73) and on application for writ of error to the Supreme Court of Texas (Application for Writ of Error, pp. 5, 86-95).

CONCLUSION

For each of the reasons assigned herein and in our principal brief, we respectfully submit that the relief requested by Petitioner should be granted.

Respectfully submitted,

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